

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-218227.5

**DATE:** April 26, 1985

**MATTER OF:** Pacific Glass Company

**DIGEST:**

1. A protest challenging an agency's determination that the protester is non-responsible is untimely and will not be considered where: (1) the agency's report on an earlier protest by the same protester clearly stated the agency's basis for rejecting the protester as nonresponsible; (2) the protester never advised GAO that it did not receive the agency report on the due date (the date GAO received the report); and (3) the protest of the non-responsibility determination was not filed with GAO within 10 working days after the report due date.
2. Where GAO notifies a protester of the administrative report due date; that it will be assumed the protester received the report the same day as GAO; GAO receives the report on the due date; and the protester does not advise GAO that it did not receive the report on that date, the protester is deemed on notice of the contents of the report as of that date; a subsequently filed protest based on information included in the report is untimely where not filed within 10 working days following the due date.

• Pacific Glass Company (Pacific) protests the Veterans Administration's (VA) determination that Pacific is nonresponsible under solicitation No. 80-115. We dismiss the protest as untimely.

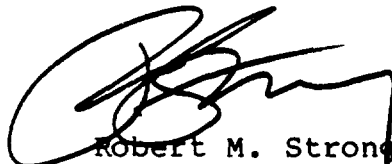
Pacific initially protested to our Office on February 25 on the ground that VA improperly had rejected its bid as nonresponsive. By notice dated February 25, we advised Pacific that VA's administrative report on the matter was due on April 1; that Pacific's comments on the report were due 7 working days after it received the report; and that the protest file would be closed if Pacific did not

submit its comments or information of its continuing interest within that 7-day period. The notice further stated that we would assume Pacific received the report on the same day our Office received it unless Pacific informed us otherwise.

VA submitted its report to our Office on April 1, the due date specified in the notice to Pacific. In that report, VA stated it was withdrawing its finding of nonresponsiveness and instead was rejecting Pacific as nonresponsible. The report explained in detail VA's reasons for this nonresponsibility determination. Pacific did not advise our Office it had not received the report on the April 1 due date, giving rise to the conclusive presumption that Pacific did receive the report on that date. Pacific also did not submit its comments or otherwise inform our Office that it was interested in proceeding with its protest, within 7 working days, that is, by April 10. In accordance with our Regulations and the February 26 notice, we therefore closed our file in the matter.

Pacific's current protest purportedly is based on an April 1 letter from VA informing Pacific of its rejection as nonresponsible. Under our Bid Protest Regulations, however, in order to be deemed timely, protest allegations must be raised no later than 10 working days after the protester first knew or should have known the bases of protest. 4 C.F.R. § 21.2(a)(2) (1985). It is not clear when Pacific received the April 1 letter but, in any case, timeliness of this protest must be measured from April 1, the day we must presume Pacific received VA's report explaining the reasons for rejecting Pacific as nonresponsible. Measuring from April 1, Pacific's deadline for protesting the nonresponsibility determination was April 15. Pacific protest was not received in our Office until after that date and, thus, is untimely. Accordingly, we will not consider the merits of the matter. See Novak Co., Inc., B-217023, Nov. 26, 1984, 84-2 C.P.D. ¶ 568.

The protest is dismissed.



Robert M. Strong  
Deputy Associate  
General Counsel